LIM KIM CHET & ANOR.

v.

MULTAR MASNGUD

PRIVY COUNCIL
LORD KEITH OF KINKEL
LORD ELWYN-JONES
LORD BRIDGE OF HARWICH
LORD BRANDON OF OAKBROOK
ROBIN COOKE
[APPEAL NO. 43 OF 1982]
18 JUNE 1984

TORT: *Negligence - Motor accident - Whether appellants or respondent liable - Whether Federal Court entitled to review findings of fact of trial Judge.*

In a collision, between a motor cycle ridden by the respondent and a lorry driven by the first appellant employed by the second appellant, the respondent was injured. The trial Judge held that the respondent had not proved his case against the appellants. But the Federal Court reversed the judgment on the ground that the accident was caused by the fault of the first appellant. Therefore this appeal by the appellants.

Held:

[1] The reasons for the judgment given by the learned trial Judge were unsatisfactory and in some respects contradictory of each other.

[2] The Federal Court was entitled to review the findings of fact of the trial Judge and to reach their conclusion upon the evidence.

[3] The correct conclusion is that the accident was caused by the negligence of the lorry driver and therefore the appellants are liable in damages.

[Appeal dismissed. Appellants to pay costs.]

Case referred to:
Thomas v. Thomas [1947] AC 485

For the appellants - Eugene Cotran (Mathew Varughese with him)
For the respondent - Tan Hock Kim

JUDGMENT

Lord Keith of Kinkel:

This appeal from the Federal Court of Malaysia arises out of a collision which took place on 8 January 1976, in the township of Johore Bahru between a motor cycle being driven by the respondent and a motor lorry being driven by the first appellant in the course of his employment with the second appellant.

The trial Judge reached the conclusion that the respondent had not proved his case of negligence against the appellants and stated that the accident was probably caused by the fault of the respondent. The Federal Court reversed his judgment and gave judgment for the respondent on the ground that the accident was caused by the fault of the first appellant.

The first and second appellants now appeal to this Board. In their Lordships' opinion the reasons for his judgment given by the learned trial Judge were unsatisfactory and in some respects contradictory of each other. It seems to their Lordships that this is very clearly a case where, consistently with the principles laid down by Lord Thankerton in *Thomas v. Thomas* [1947] AC 485 at p. 488, the Federal Court were entitled to review the findings of fact of the trial Judge and to reach their own conclusion upon the evidence.

Further, their Lordships are in complete agreement with the Federal Court that upon a proper consideration of the evidence as recorded by the trial Judge the correct conclusion is that the accident was caused by the negligence of the lorry driver and that the appellants are liable in damages. The damages are not now disputed, the defendants being content to accept the assessment made by the Federal Court.

Their Lordships will advise His Majesty, the Yang di-Pertuan Agong that this appeal should be dismissed. The appellants must pay the respondent's costs.

Also found at [1984] 2 CLJ 77